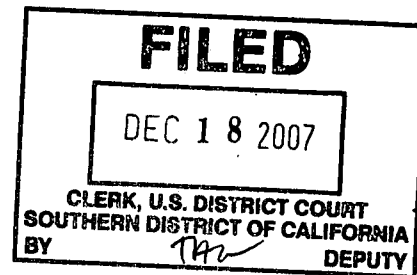


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6 Attorneys for Plaintiff  
7 UNITED STATES OF AMERICA



8  
9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA, )  
12 )  
Plaintiff, )

13 v. )

14 JOSE LEON-PONCE,  
15 T/N Jose Ponce-Leon )  
16 Defendant. )

Magistrate Case No. 07MJ8961

**STIPULATION OF FACT AND JOINT  
MOTION FOR RELEASE OF  
MATERIAL WITNESS(ES) AND  
ORDER THEREON**

**(Pre-Indictment Fast-Track Program)**

17 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES  
18 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and David D.  
19 Leshner, Assistant United States Attorney, and defendant JOSE LEON-PONCE, by and through and  
20 with the advice and consent of defense counsel, Erica Zunkel, Federal Defenders of San Diego, Inc.,  
21 that:

22 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing  
23 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,  
24 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead  
25 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count  
26 of Transportation of Aliens and Aiding and Abetting, in violation of 8 U.S.C. §1324(a)(1)(A)(ii)  
27 and (v)(II).

28 //

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1           2. Defendant acknowledges receipt of a plea agreement in this case and agrees to  
2 provide the signed, original plea agreement to the Government not later than five business days  
3 before the disposition date set by the Court.

4           3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or  
5 before January 4, 2008.

6           4. The material witnesses, Narciso Vidal-Campos, Jesus Cabrera-Lopez, and Saul  
7 Mendez-Morales, in this case:

8           a. Are aliens with no lawful right to enter or remain in the United States;

9           b. Entered or attempted to enter the United States illegally on or about  
10 December 4, 2007;

11           c. Were found in a vehicle driven by defendant near Calexico, California and  
12 that defendant knew or acted in reckless disregard of the fact that they were aliens with no lawful  
13 right to enter or remain in the United States;

14           d. Were paying or having others pay on their behalf \$1,000 - \$2,000 to others  
15 to be brought into the United States illegally and/or transported illegally to their destination therein;  
16 and,

17           e. May be released and remanded immediately to the Department of Homeland  
18 Security for return to their country of origin.

19           5. After the material witnesses are ordered released by the Court pursuant to this  
20 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any  
21 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,  
22 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

23           a. The stipulated facts set forth in paragraph 4 above shall be admitted as  
24 substantive evidence;

25           b. The United States may elicit hearsay testimony from arresting agents  
26 regarding any statements made by the material witness(es) provided in discovery, and such testimony

27 //

28 Stipulation of Fact and Joint Motion for Release of  
Material Witness(es) And Order Thereon in  
United States v. Jose Leon-Ponce

1 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest  
2 of (an) unavailable witness(es); and,

3 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),  
4 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted  
5 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant  
6 waives the right to confront and cross-examine the material witness(es) in this case.

7 6. By signing this stipulation and joint motion, defendant certifies that defendant has  
8 read it (or that it has been read to defendant in defendant's native language). Defendant certifies  
9 further that defendant has discussed the terms of this stipulation and joint motion with defense  
10 counsel and fully understands its meaning and effect.

11 Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
12 immediate release and remand of the above-named material witness(es) to the Department of  
13 Homeland Security for return to their country of origin.

14 It is STIPULATED AND AGREED this date.


15 Respectfully submitted,

16 KAREN P. HEWITT  
United States Attorney


17  
18 Dated: 12/18/07

  
19 DAVID D. LESHNER  
Assistant United States Attorney

20 Dated: 12/18/07

  
21 ERICA ZUNKEL  
Defense Counsel for Jose Leon-Ponce

22  
23 Dated: 12/18/07

  
24 JOSE LEON-PONCE  
Defendant

**ORDER**

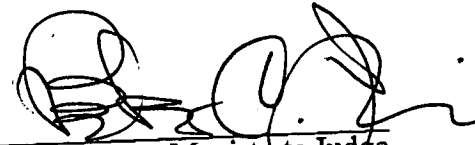
Upon joint application and motion of the parties, and for good cause shown,

**THE STIPULATION** is admitted into evidence, and,

**IT IS ORDERED** that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

**SO ORDERED.**

Dated: 12-18-07

  
United States Magistrate Judge